IN THE HIGH COURT OF UTTARANCHAL AT

NAINITAL

Civil Misc. Writ Petition No. 200 (S/S) of 2001

Jot Singh Parmar S/o Late Mahendra S. Parmar
R/o Village Surp Patti Gamary Dichali,
Tehsil Dunda, District-Uttarkashi.
……. Petitioners

Versus

State of Uttaranchal through
Chief Secretary, Dehradun
And three others.
…….. Respondents

……

Hon'ble P.C.Verma, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioner as well as learned Standing Counsel.

The petitioner was appointed as Peon in the office of District Social Welfare Officer, Uttarkashi on 07.04.1978. The petitioner was promoted on Class-III post on 07.03.1991 under the 15% quota reserved for the Class-IV employees to be filled in Class-III posts. The petitioner continued to work till 13.08.1996. Thereafter he applied for leave and went on leave from 14.08.1996. He continued on leave and extended his leave from time to time and when he recovered from illness, reported to the office on 17.02.1999. The Superintendent of the office did not allow the petitioner to join the office and he sent all the records to Director, Social Welfare, Lucknow for decision in respect of the joining of the petitioner. Since no decision was taken till the filing of the writ petition, the petitioner filed this writ petition seeking writ of mandamus to command the respondents to join the duties on the ground that his services have not been terminated and he is entitled to service.

In the counter affidavit it has not been indicated that any termination order terminating the services of the petitioner was issued but it has been stated that since the petitioner absented himself from duties for substantially about two years without any

leave application alongwith medical certificate, the petitioner has not been allowed to join the duties. The stand taken in the counter affidavit filed in the writ petition are not tenable under law in view of the provisions of rule 18 of the Uttar Pradesh Fundamental Rules which reads as under:-

> "18. Unless the Government, in view of the special circumstances of the case, otherwise determine, after five years' continuous absence from duty elsewhere than on foreign service in India, whether with or without leave, no Government servant shall be granted leave of any kind. Absence beyond five years will attract the provisions of Rules relating to disciplinary proceedings."

In view of the provisions of aforesaid rule, if the petitioner was found absent illegally, departmental proceedings ought to have held against him and his services could be terminated in accordance with law.

Since the petitioner's services have not been terminated and no departmental proceedings have been initiated in view of Rule 18 of the aforesaid Rules, the petition is allowed. The respondents are directed to allow the petitioner to join the service within 15 days from the date of production of certified copy of this order. No order as to costs.

27.08.2003

P.Singh

P.C.Verma.J.